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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-870]

Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 2, 2016, the United States Court of International Trade (the CIT) sustained the Department of Commerce (the Department)'s final results of redetermination concerning the less-than-fair-value (LTFV) investigation of certain oil country tubular goods (OCTG) from the Republic of Korea. The Department is notifying the public that the CIT's final judgment in this case is not in harmony with the Department's final determination in the LTFV investigation, and that the Department is amending the weighted-average dumping margins from the final determination.

DATES: Effective: August 12, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Victoria Cho, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2657 or (202) 482-5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2014, the Department published the *Final Determination* in the LTFV investigation of OCTG from the Republic of Korea.¹ Subsequently, various interested parties timely filed complaints with the CIT to challenge certain aspects of the Department's *Final Determination*. On September 2, 2015, the CIT issued its *Remand Order*, directing the Department to reconsider certain aspects of the constructed value (CV) profit rate calculation used in the dumping margin analysis. Specifically, the Court instructed the Department to: 1) either remove the financial statements of Tenaris, S.A. (Tenaris) from the record and not use them in the CV profit calculation, or, alternatively, rectify the alleged prejudice from acceptance of such statements; 2) either exclude from consideration or, alternatively, explain the relevance of market conditions and testing and certification requirements to the determination of which products are in the same general category of merchandise as OCTG; and, 3) either calculate and apply a profit cap or, alternatively, explain why the data on the record cannot be used to calculate a "facts available" profit cap under 19 U.S.C. 1677b(e)(2)(B)(iii). In addition, the CIT found that the Department did not provide sufficient reasoning for declining to select ILJIN Steel Corporation (ILJIN) as a mandatory respondent, and thus ordered the Department to reconsider the issue of whether the two selected respondents (Hyundai Steel Company (HYSCO) and NEXTEEL Co. Ltd. (NEXTEEL)), which produce only welded OCTG, were representative of the Korean industry. As part of this remand, the Court directed the Department to consider

¹ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*Final Determination*).

information on the record that is probative of the difference between welded and seamless OCTG, including costs and pricing.²

After the CIT issued its *Remand Order*, the Department re-opened the record to allow all interested parties to submit new factual information and comment on the issue of CV profit (including the application of the profit cap) in the event the Department relied upon the alternative CV profit methodology provided for under 19 U.S.C. 1677b(e)(2)(B)(iii). On February 22, 2016, the Department issued its *Final Redetermination*, in which it provided further explanation of which products are in the same general category of merchandise as OCTG and why the revised calculated CV profit rate in the *Final Redetermination* is also appropriately applied as the profit cap based upon the available facts. The Department also revised the CV profit rate calculation, basing it on the average of the profit rates in the 2012 financial statements of Tenaris and OAO TMK, a Russian producer/exporter of OCTG. As a result, the weighted-average dumping margins changed for HYSCO, NEXTEEL, and all other Korean exporters and producers. In the *Final Redetermination*, the Department also explained the basis for exercising its discretion to select mandatory respondents using the largest volume method, including the requisite analysis of record evidence, and therefore why it was appropriate not to select ILJIN as a mandatory respondent in the underlying investigation.³ On August 2, 2016, the CIT upheld the Department's *Final Redetermination* in full.⁴

² See *Husteel Co., Ltd., et al., v. United States*, Consol. Court No. 14-00215, Slip. Op. 15-100 (Ct. Int'l Trade Sept. 2, 2015) (*Remand Order*).

³ See *Final Redetermination Pursuant to Court Remand in Husteel Co., Ltd., et al., v. United States*, Consol. Court No. 14-00215, dated February 22, 2016 (*Final Redetermination*). The *Final Redetermination* is accessible at <http://enforcement.trade.gov/remands/15-100.pdf>.

⁴ See *Husteel Co., Ltd., et al., v. United States*, Consol. Court No. 14-00215, Slip. Op. 16-76 (Ct. Int'l Trade Aug. 2, 2016).

Timken Notice

In its decision in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the United States Court of Appeals for the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision not “in harmony” with a Department determination, and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s August 2, 2016 judgment sustaining the *Final Redetermination* constitutes a final decision of that court which is not in harmony with the Department’s *Final Determination*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to the weighted-average dumping margins for NEXTEEL, HYSCO, and all other Korean exporters and producers for the period July 1, 2012 through June 30, 2013, effective August 12, 2016. The revised weighted-average dumping margins are as follows:

Exporter or Producer	Weighted-Average Dumping Margin
Hyundai HYSCO ⁷	6.49 percent
NEXTEEL Co. Ltd.	3.98 percent
All-Others	5.24 percent

⁵ See *Timken Co., v United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁷ On July 18, 2016, the Department published the notice of initiation and expedited preliminary results of a changed circumstances review in which it preliminarily determined that Hyundai Steel Co. Ltd. is the successor-in-interest to Hyundai HYSCO. See *Certain Oil Country Tubular Goods From the Republic of Korea: Initiation and Expedited Preliminary Results of Changed Circumstances Review*, 81 FR 46645 (July 18, 2016). If the Department upholds these preliminary results in its final results, Hyundai Steel Co. Ltd. will be entitled to the antidumping duty deposit rate currently assigned to Hyundai HYSCO with respect to the subject merchandise.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Cash Deposit Requirements

Since the *Final Determination*, the Department has not established a new cash deposit rate for HYSCO, NEXTEEL, or all other Korean exporters and producers. As a result, in accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection to collect cash deposits at the rates for entries of subject merchandise in accordance with the rates for exporters and producers listed above in this notice, effective August 12, 2016.

This notice is issued and published in accordance with sections 516(A)(e), 735(d), and 777(i)(1) of the Act.

Dated: August 24, 2016.

Paul Piquado
Assistant Secretary
for Enforcement & Compliance

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